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Annexation's Long Good-Bye

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ANNEXATION'S LONG GOOD-BYE

*Nadav Shoked**

Two attributes legally define a local government: its powers and its boundaries. As commentators have noted, during this past decade local government powers have been subject to a constant, ferocious, and arguably unprecedented, attack. Concurrent to the passage of statutes curbing local powers, states have also been busy reforming laws dealing with local government's second defining attribute. Specifically, in the few remaining places where cities still enjoyed relative freedom to expand their boundaries by annexing outlying areas without those areas' consent, states adopted laws to curb the practice. These reforms have garnered limited scholarly attention. To the extent they have, they were read as expressing the same anti-urban bias animating the era's local power-removing statutes. As currently told, the contemporary story of the second attribute defining local governments — boundaries — overlaps with the story of the first — powers. This Essay, however, offers a more nuanced interpretation of the attitude the laws restraining annexation powers evince toward cities. The recent laws should be placed within a broader story not of states' attitude toward local power, but of the evolution of local boundaries in America. That story is mostly one of changing economic circumstances and incentives respecting access to key infrastructure. Seen within that distinct frame, the new anti-annexation laws materialize as representing not a regressive anti-city move, but rather the inevitable maturation of metropolitan regions throughout the United States. To further support this contention the Essay offers a close reading of the new statutes to note their core features. This reading also facilitates a wider reassessment of some commentators' unyielding faith in the normative benefits of annexation.

*Professor of Law, Northwestern University Pritzker School of Law. This Essay was written as part of the *Fordham Urban Law Journal's* 2022 Cooper-Walsh Colloquium. I am very grateful to the organizers for inviting me to participate, and for the editors on going to great efforts to help me improve this Essay. I also received invaluable comments from Richard Briffault, Nestor Davidson, Erin Scharff, and Katrina Wyman. Finally, for truly outstanding help with research I am thankful to Kathleen Naccarato.

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INTRODUCTION

We are living through the final tightening of American cities' legal boundaries. Cities extend their boundaries through the legal tool of annexation. In this fashion, they grow to encompass outlying areas. Starting in the early 2010s, however, the few states that had still allowed cities to easily exercise annexation powers began removing these powers.¹ As a result, city boundaries can almost nowhere now shift outwards as easily as they could in earlier decades and centuries. What motivated this recent, and conclusive, turn against annexation?

One appealing possibility is to view the reform to annexation laws as forming part of a broader statutory attack on cities. Anti-city state measures normally take the form of preemption. The state adopts laws that remove powers from the local government, ban certain local acts, or overrule city decisions. Recent such laws include limitations on local civil rights measures,² on certain forms of local taxation,³ on pandemic local masking mandates,⁴ on local gun regulations,⁵ or on the local power to refuse to cooperate with federal immigration authorities⁶ (or on the local power to commit to such cooperation).⁷ Other examples include state dictates of educational curriculum to local schools or of

1. See *infra* notes 128–32 and accompanying text.

2. See, e.g., ARK. CODE ANN. § 14-1-403(a) (2015) (prohibiting local governments from “creat[ing] a protected classification or prohibit[ing] discrimination on a basis not contained in state law”).

3. See, e.g., Nadav Shoked, *Cities Taxing New Sins: The Judicial Embrace of Local Excise Taxation*, 79 OHIO ST. L.J. 801, 834 (2018) (discussing the preemption of local soda taxes).

4. See, e.g., Ga. Exec. Order No. 07.15.20.01, at 32, 40 (July 15, 2020).

5. See, e.g., FLA. STAT. ANN. § 790.33 (West 2021).

6. See, e.g., TEX. GOV'T CODE ANN. § 752.053 (West 2017).

7. See, e.g., 5 ILL. COMP. STAT. ANN. 805/15 (2021).

disciplinary procedures to local police forces.⁸ As these examples illustrate, clear political undertones often mark preemption: a state legislature that is of one political persuasion will curtail the ability of cities that are of the opposite persuasion to act on their distinct political preferences. It is thus unsurprising that these efforts proliferated over the past decade or so. Following the 2010 midterm elections, conservative Republicans took control of many state legislatures, including in states that are home to major cities with liberal Democratic majorities.⁹ A new era of particularly aggressive preemption of local powers had dawned. Commentators aptly christened it the “new preemption.”¹⁰

Three states that embody the pertinent political dynamics are North Carolina, Tennessee, and Texas.¹¹ As the three proceeded to preempt liberal major cities’ powers, adopting some of the most famous (or infamous) anti-local powers laws in the nation, they also curtailed those cities’ annexation powers.¹² Like their (and other states’) preemption laws, their annexation reforms were often couched in politically

8. See, e.g., 105 ILL. COMP. STAT. 5/2-3.64a-5 (2020) (school curriculum); ALA. CODE § 11-43-230 (1975) (officer disciplinary procedures).

9. See KIM HADDOW ET AL., THE GROWING SHADOW OF STATE INTERFERENCE 7 (2020), <https://stateinnovation.org/wp-content/uploads/2020/11/The-Growing-Shadow-of-State-Interference-Preemption-in-the-2019-State-Legislative-Sessions.pdf> [<https://perma.cc/98DG-V5JY>] (last visited Mar. 24, 2023); Nestor M. Davidson, *The Dilemma of Localism in an Era of Polarization*, 128 YALE L.J. 954, 964 (2019).

10. See, e.g., Richard Briffault, *The Challenge of the New Preemption*, 70 STAN. L. REV. 1995, 1997 (2018) [hereinafter Briffault, *The Challenge of the New Preemption*] (“This decade has witnessed the emergence and rapid spread of a new and aggressive form of state preemption of local government action . . . [T]he real action today is the new preemption: sweeping state laws that clearly, intentionally, extensively, and at times punitively bar local efforts to address a host of local problems.”); see also Richard C. Schragger, *The Attack on American Cities*, 96 TEX. L. REV. 1163, 1164 (2018) (“The last few years have witnessed an explosion of preemptive state legislation challenging and overriding municipal ordinances across a wide range of policy areas.”).

11. See, e.g., Briffault, *The Challenge of the New Preemption*, *supra* note 10, at 2025 (singling out the political dynamics in North Carolina and Texas); Patrick Flavin & Gregory Shufeldt, *Explaining State Preemption of Local Laws: Political, Institutional, and Demographic Factors*, 50 PUBLIUS 280, 285 (2020) (finding that the Tennessee legislature led the nation in overruling local policies).

12. See Erin Anderson, *Success Story: Texas Ends Forced Annexation*, TEX. SCORECARD (July 22, 2019), <https://texasscorecard.com/state/success-story-texas-ends-forced-annexation/> [<https://perma.cc/9GBA-RKSM>]; Andy Sher, *Gov. Bill Haslam signs bill ending ‘forced’ annexations*, JOHNSON CITY PRESS (Apr. 16, 2014), https://www.johnsoncitypress.com/gov-bill-haslam-signs-bill-ending-forced-annexations/article_768be339-46a8-5589-b18a-65a8e71dae61.html [<https://perma.cc/S4MR-EDSP>]; Josh Goodman, *North Carolina Limits Cities Ability to Grow*, PEW STATELINE (July 6, 2012), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2012/07/06/north-carolina-limits-cities-ability-to-grow> [<https://perma.cc/K9EH-5ZE5>].

conservative terms of protecting individual property rights against encroaching local governments.¹³ The developments materialize as perfectly in line. The new annexation laws were one component of the broader new preemption agenda.¹⁴

But unlike the new preemption, there was nothing particularly new about the “new” annexation regime these states introduced. When North Carolina, Tennessee, and Texas acted in the 2010s to curb annexation, they did what other states, mostly in the Northeast and Midwest, had already done a century or more earlier.¹⁵ Annexations to major cities in the North (and California) had mostly ground to a halt in the early twentieth century. Southern states, in retaining extensive city annexation powers throughout the twentieth century, were outliers. This Essay argues that by finally shedding their status as such in this past decade, states like North Carolina, Tennessee and Texas were following not just contemporary political currents, but also traditional economic imperatives that had earlier generated these same reforms elsewhere.

An easy-to-ignore fact is that an embrace or rejection of cities’ power to annex does not only effectuate a pro- or anti-city sentiment. It also contemplates financial factors and serves certain economic interests. The financial factor most germane to annexation dynamics is the cost relevant communities must expend to acquire vital

13. See, e.g., Judith Welch Wegner, *North Carolina’s Annexation Wars: Whys, Wherefores, and What Next*, 91 N.C. L. REV. 165, 203 (2012) (explaining that the North Carolina legislative reforms were the result of a war between property rights advocates and municipal leaders); Julie Tomascik, *New Annexation Law Protects Texas Landowners*, AGRIC. DAILY (Jan. 3, 2018), <https://texasfarmbureau.org/new-annexation-law-protects-texas-landowners/> [<https://perma.cc/V4LM-LKE4>]; Julie Polansky Bell, *Municipal Annexation Reform in Texas: How A Victory for Property Rights Jeopardizes the State’s Financial Health*, 50 ST. MARY’S L.J. 711, 737 (2019) (noting that the passage of the Texas annexation law reform was “was a clear victory for the property rights movement”); Gary B. Gray, *Wednesday a Game Changer for Annexation in Tennessee*, JOHNSON CITY PRESS (Apr. 1, 2014), https://www.johnsoncitypress.com/wednesday-a-game-changer-for-annexation-in-tennessee/article_da32f636-b09b-5629-97d4-bce4bb1897df.html [<https://perma.cc/PA2B-99WG>] (reporting that the genesis of the Tennessee reform law was a bill that was a reaction to “[a] conflict between Johnson City’s right to annex land contiguous to its urban growth boundary in Washington County and Gray residents’ insistence their property rights were being violated”).

14. Joshua Sellers and Erin Scharff have highlighted the new preemption laws that attack local government’s control over their structure. However, the structural issues that are of interest to them pertain to questions of political organization and participation, and thus they explicitly sidestep statutory reforms to cities’ control over boundaries. See Joshua S. Sellers & Erin A. Scharff, *Preempting Politics: State Power and Local Democracy*, 72 STAN. L. REV. 1361, 1394–95 n.203 (2020).

15. See *infra* Part I.

infrastructure — mostly water. At different stages of development within a metropolitan area, these costs can make annexation more or less appealing to the different parties whose interests dictate such decisions. This Essay tells the story of the evolution of annexation law — its Northern heyday and decline, its Southern afterlife, and that afterlife's very recent conclusion — as a story of cycles of development. This retelling of the history of annexation provides a more nuanced description of the American law of annexation as it stands in 2023 — better than the one that simply reads the curbing of annexation powers as part of the straining of state/local relationship in our hyper-partisan times.¹⁶

The new focus also presses a reassessment of the common normative attitude toward the American law of annexation. For many, annexation's Northern demise has been associated with the weakening of major cities.¹⁷ By rendering cities practically incapable of annexing surrounding developing areas, the law facilitated suburbanization.¹⁸ Seen in this traditional light, when southern states now target cities' annexation powers, they are not solely acting on blunt political biases, but also instituting troubling metropolitan policies.¹⁹

16. See, e.g., Josh Goodman, *Republican Legislature Moves to Preempt Local Government*, PEW STATELINE (Mar. 19, 2012), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2012/03/19/republican-legislatures-move-to-preempt-local-government> [<https://perma.cc/YF7J-NM53>] (counting annexation alongside gun control, smoking bans, living wage, and anti-discrimination protection when listing local measures that the conservative state is seeking to preempt); see also Christopher J. Tyson, *Localism and Involuntary Annexation: Reconsidering Approaches to New Regionalism*, 87 TUL. L. REV. 297, 327 (2012) (connecting the revolt against involuntary annexation to antistatist and pro-property rights political currents); David Schleicher, *Constitutional Law for NIMBYS: A Review of "Principles of Home Rule for the 21st Century" by the National League of Cities*, 81 OHIO ST. L.J. 883, 921 (2020) ("Annexation and secession have been a major political football in recent years.").

17. See DAVID RUSK, *CITIES WITHOUT SUBURBS* 5–10 (2d ed. 1995) (arguing that cities in the northeast and Midwest have been rendered inelastic due to tightened annexation laws and that these cities therefore experienced decline); M.G. Woodroof II, *Systems and Standards of Municipal Annexation Review: A Comparative Analysis*, 58 GEO. L.J. 743, 775 (1970) (lamenting the shifting of power over annexation to resident voters who have stifled urban expansion and hoping that the decision powers would therefore be granted instead to experts); Laurie Reynolds, *Rethinking Municipal Annexation Powers*, 24 URB. LAW. 247, 249–50 (1992) (arguing that reforms to the law granting owners in the fringe of the municipality veto rights over annexation unwisely thwart the municipality's ability to annex urbanized territory and that those prohibiting annexation of areas that already form part of another municipality prioritize speed over planned growth).

18. See *infra* note 167 and accompanying text.

19. See Tyson, *supra* note 16, at 300 ("[A]nnexation law has emerged as a bulwark against the ability of metropolitan-area central cities to expand their territory in a manner that allows them to balance the books.").

While not unappealing, this argument still has an obvious flaw. It implies that up to this past decade when their annexation powers were finally curtailed, southern cities were able to avoid the century's suburbanization drive, or that drive's detrimental effects on inner cities. That, of course, has not been the case. Few would describe Charlotte, Dallas, and Memphis as idyllic locales left immune to the urban malaise that had afflicted other American centers in the twentieth century. This reality should lead to questioning some's conviction that annexation powers will ameliorate inner cities' plight.²⁰ Annexation's champions stress that by expanding the city's sphere, annexation enlarges its rights: to regulate and to tax. But annexation also enlarges the city's duties: the city must now provide services to new areas. Annexation generates costs for the city.²¹ Due to such costs, its intuitive attractiveness notwithstanding, annexation is highly unlikely to, always, in all circumstances, be in a city's best long term interests.

In the specific adjustments they make to annexation practices, the new laws often force parties to take into account these costs. Indeed, some of them explicitly isolate infrastructure costs as the key factor determining whether annexation is allowable in a given case.²² When read and analyzed in detail, the new annexation laws show themselves as much more nuanced than the new preemption laws. Most commentators (rightly) criticize the new breed of preemption as weakening cities, especially major cities, in an unprincipled manner.²³ The new annexation laws are different. They do curtail powers cities still held in the South — but they can also empower cities, show concern for poor residents, and promote effective regional planning. Undoubtedly, partisan interests and anti-urban biases provided some of the motivation for their enactment, especially in the South. But however irrational and lamentable the intent, the resulting legislation at times can be quite rational and beneficial.

To provide this better understanding of recent reforms to annexation laws, and through them, of the law of annexation in general, the first three parts of the Essay proceed chronologically. After explaining the legal function of annexation, Part I reviews the well-known story of the rise and fall of annexation practices in the Northeast, Midwest, and California during the second half of the

20. See *infra* Part I.

21. See, e.g., *infra* notes 146–51 and accompanying text.

22. See *infra* Part IV.

23. See, e.g., Briffault, *The Challenge of the New Preemption*, *supra* note 10, at 2025–26.

nineteenth century and the opening decades of the twentieth.²⁴ Part II discusses how then, in the twentieth century, annexation moved to thrive in the South.²⁵ It attributes this trend to the different development patterns in the South and to such patterns' effects on the relative financial benefits of annexation.²⁶ Part III turns to review the laws from the second decade of the twenty-first century that finally put annexation to rest everywhere.²⁷ It shows how, viewed through the prism of annexation's relative costs, these laws implement nuanced, and often (though, of course, not always) good, policy.²⁸ These findings lead to Part IV's concluding normative remarks urging commentators to temper their celebration of annexation.²⁹

I. FIRST ACT: NINETEENTH-CENTURY NORTHERN LIFE AND DEATH

Boundaries are a key attribute of government and community. They define the government's sphere of power and identify who forms part of the community. For most sub-federal governments, those boundaries are rather static. States' boundaries were mostly set when they entered the union.³⁰ Counties' jurisdictions are also remarkably stable, so much so that commentators quip: "the legislature may create municipalities, but only God can create a county."³¹

As the adage implies, municipalities, such as cities, are different. While counties are there, cities, as far as the law is concerned, are created. This means that with very few exceptions all land in the United States forms part of a county (the term may differ across states: borough, parish, etc.) but not all land forms part of a city. Even if untrue as a matter of history, conceptually, at first land forms part of a county and then, through a certain legal act, it can also become part of a city. To become a new city, an area must legally "incorporate."³² The incorporation act inevitably also details the boundaries of the area that

24. *See infra* Part I.

25. *See infra* Part II.

26. *See id.*

27. *See infra* Part III.

28. *See id.*

29. *See infra* Part IV.

30. Though those boundaries are not completely set in stone, as state can alter their boundaries through inter-state compacts. *See* Joseph Blocher, *Selling State Borders*, 162 U. PA. L. REV. 241, 246 (2014).

31. RUSK, *supra* note 17, at 94.

32. *See* Richard Briffault, *Our Localism: Part I – The Structure of Local Government Law*, 90 COLUM. L. REV. 1, 73–77 (1990) [hereinafter Briffault, *Our Localism: Part I*].

will form part of the newly incorporated city. These city boundaries, originally set when the city incorporates, can later shift, however. Post-incorporation, more area can be added to a city; conversely, existing area can be subtracted. The former act is known as annexation; the latter as de-annexation, or secession.³³

What does it mean for land to, via incorporation or annexation, form part of an incorporated city? Originally only controlled by the county, land that becomes part of a city now has a second general-purpose government controlling it. This added layer of government is more powerful than the county. Counties are generally bare bones governmental structures. Cities are much more robust.³⁴ Territories included within a city's realm are eligible to receive services from the city, which can include water, sewage, police, sanitation, and more. Such territories are also subject to the city's myriad regulatory powers. Often the most important and contested of these is the power to define and regulate land uses. Finally, to fund these extra services and regulatory regimes, the city taxes the territories included within its boundaries.³⁵ The city, in other words, is an added, and more powerful, layer of government — one with more extensive services, more intrusive regulation, and more taxes than the county. Finding oneself within city boundaries, via incorporation or annexation, thus carries major effects.³⁶

Incorporation and annexation are particularly important as an area is developing. Undeveloped, scarcely populated, rural areas have neither much need for the extended services and regulation a city can provide, nor the means to pay for them. As the population in a specific area grows, the area's need for government services and coordination grows as well. For this reason, in America issues of incorporation and annexation came to the forefront starting in the second half of the nineteenth century when the nation confronted unprecedented levels of industrialization, immigration, and urbanization.³⁷ In the Northeast and Midwest existing cities were becoming denser, new ones were

33. See JOHN MARTINEZ, LOCAL GOVERNMENT LAW §§ 8:31–8:32 (2022).

34. See Michelle Wilde Anderson, *Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe*, 55 UCLA L. REV. 1095, 1140–44 (2008).

35. See GREGORY WEIHER, THE FRACTURED METROPOLIS 33–34 (1991).

36. See, e.g., Agustin Leon-Moreta, *Municipal Incorporation in the United States*, 52 URB. STUD. 3160, 3162 (2015) (discussing the reasons why areas incorporate).

37. See H. HYMAN, A MORE PERFECT UNION 226–66 (1973) (documenting the pressure for increased government activism to solve new urban problems after the Civil War).

emerging, and, perhaps most influentially, development was expanding around those existing and new cities. The suburbs were emerging.³⁸

Many reasons have been cited for the growth of the American suburb: for, that is, the form that the built environment surrounding central cities in America assumed starting after the Civil War. A strong middle-class and then working-class preference for single-family housing has been attributed to economic, technological, social, and perhaps most commonly, cultural factors.³⁹ Irrespective of cause, the emergence of the single-family home suburb, from which residents commuted to work in the central city, meant that at the outskirts of existing major cities, in areas that were undeveloped or agricultural, housing was now being built. The growing population in such areas needed a more effective form of government to supplement the pre-existing county form of governance serving them.⁴⁰ This need could be sated in one of two alternative ways: outlying suburbanizing areas could incorporate and have their own city government, or they could join the existing adjacent larger city.⁴¹ The question of whether the suburbs will legally become part of the city whose economic satellites they formed was a question about annexation.

For the first decades after the first suburbs had formed, cities grew to include the suburbs.⁴² The great cities of the Northeast and Midwest became the cities we know today through annexing both outlying unincorporated county areas and formerly independent cities.⁴³ In one

38. In his definitive history of the American suburb, Kenneth Jackson notes that while the suburb as the site of scattered dwellings outside city walls is as old as civilization, suburbanization as a process whereby fringe areas grow at a faster pace than the central city dates in the US and Britain to about 1815. See KENNETH JACKSON, *CRABGRASS FRONTIER* 13 (1985). The transportation revolution in the ensuing 60 years bred the complete transformation in the nature, and desirability, of the suburbs. See *id.* at 20.

39. See *id.* at 42–43 (discussing transportation and culture), 190–91 (discussing federal policy); LEWIS MUMFORD, *THE CITY IN HISTORY* 486–87 (1961) (discussing desire for uniformity); PETER HALL, *CITIES OF TOMORROW* 291–93 (1988) (discussing roads, zoning, and housing finance); ROBERT FISHMAN, *BOURGEOIS UTOPIAS* 3–4 (1987) (discussing middle-class values).

40. See JACKSON, *supra* note 38, at 138.

41. See Robert D. Zeinemann, *Overlooked Linkages Between Municipal Incorporation and Annexation Laws: An in-Depth Look at Wisconsin's Experience*, 39 *URB. LAW.* 257, 264 (2007) (noting that the first general annexation and inspiration statutes were adopted by the Wisconsin legislature as a package in 1889).

42. See JACKSON, *supra* note 38, at 138.

43. See *id.* at 140–41 (“If annexation . . . had not taken place, there would now be no great cities in the United States in the political sense of the term.”); Richard Briffault, *Our Localism: Part II—Localism and Legal Theory*, 90 *COLUM. L. REV.* 346, 358 (1990) [hereinafter Briffault, *Our Localism: Part II*] (“Between the Civil War and

move in 1854, Philadelphia quadrupled its population and expanded its area from 2 to 130 square miles — for a few years, becoming the largest city in the world in terms of area.⁴⁴ Boston annexed Charlestown, Brighton, Dorchester, and Roxbury.⁴⁵ Chicago, which had incorporated with little more than ten square miles in 1837, annexed so much land in 1889 that it became the (then) largest city in the country in area.⁴⁶ In 1898, the nation's fourth largest city, Brooklyn, alongside western Queens County and Staten Island (Richmond County), joined New York City (Manhattan) which had already annexed the Bronx.⁴⁷ In 1875, Detroit covered 12.75 square miles; in 1926, it covered 139, and during that year alone it annexed 19.91 square miles — more than its entire area fifty years earlier.⁴⁸

Then, throughout the North, annexation stopped. Annexation's first major setback occurred when Brookline, Massachusetts, rebuffed Boston in 1874.⁴⁹ Chicago then failed in its attempt to annex Evanston — which in turn did not annex Wilmette — in 1894.⁵⁰ Detroit's final annexation was in 1926. New York City did not expand into Westchester County to the north (indeed, an effort to annex portions of it had failed at the time of consolidation)⁵¹ or into Nassau County (the eastern portion of pre-consolidation Queens County) to the east.⁵² A similar story unfolded in both northern and southern California.

World War I, most of the great cities of the Northeast and Midwest experienced significant territorial growth through annexation or consolidation.”).

44. *See id.* at 142.

45. *See id.* at 149.

46. *See* Louis P. Cain, *Annexation*, ENCYCLOPEDIA OF CHI., <http://www.encyclopedia.chicagohistory.org/pages/53.html> [<https://perma.cc/H8WD-X3W5>] (last visited Jan. 29, 2023).

47. *See* Robert D. McFadden, *Rockets' Red Glare Marked Birth of Merged City in 1898*, N.Y. TIMES (Jan. 1, 1973), <https://www.nytimes.com/1973/01/01/archives/rockets-red-glare-marked-birth-of-merged-city-in-1898-sounds-and.html> [<https://perma.cc/D8AW-UFCQ>]; MIKE WALLACE, *GREATER GOTHAM: A HISTORY OF NEW YORK FROM 1898 TO 1919*, at 4 (2017).

48. *See* *Detroit Annexation 1806–1926*, DRAWING DETROIT (June 1, 2015), <http://www.drawingdetroit.com/detroit-annexation-1806-1926/> [<https://perma.cc/PQ9B-X4ZE>] (charting the growth of Detroit).

49. *See* JACKSON, *supra* note 38, at 149.

50. *See* Cain, *supra* note 46.

51. *See* Richardson Dilworth, *Urban Infrastructure Politics and Metropolitan Growth: Lessons From the New York Metropolitan Region*, 6 PUB. WORKS MGMT. & POL'Y 200, 203–04 (2002).

52. *See* Keith Williams, *How Queens Became New York City's Largest Borough*, CURBED (Oct. 20, 2015), <https://ny.curbed.com/2015/10/20/9912148/how-queens-became-new-york-citys-largest-borough> [<https://perma.cc/ZV39-W4LZ>].

Piedmont spurned Oakland in 1907 to become an island within that larger city.⁵³ Meanwhile, Beverly Hills resisted Los Angeles in 1923.⁵⁴

The demise of annexation represented a key political turning point. Moving forward, suburbs in America would be separate legal entities.⁵⁵ The central cities on whose commercial and industrial base the suburbs' existence depended would not guide those communities' development. Furthermore, the suburbs would not fund central cities' services.⁵⁶ In all the cases mentioned in the preceding paragraph, as in others, the unannexed cities and areas would grow into the pertinent city's quintessential, and often affluent, suburbs.⁵⁷ Annexation's disappearance meant that henceforth locations that would have before constituted city neighborhoods, were to be a city's suburbs.⁵⁸

Annexation's end throughout America's industrialized urban centers correlated to, and was facilitated by, extensive reforms to annexation laws. The core task of the law of annexation is to define the test, or terms, for a city's expansion into areas that do not currently form part of the city. The law must determine who are the parties that can set such expansion in motion.⁵⁹ Federal courts have long held that states are free to make this determination in whatever way they please.⁶⁰ A state can thus choose to involve, or not involve, in the decision any area allegedly affected by an annexation decision, and to do so to whatever extent it desires.⁶¹

In the most famous local government law decision in American law, the Supreme Court ruled in *Hunter v. Pittsburgh* that the state of Pennsylvania had the full authority to force the annexation of the City of Allegheny into the City of Pittsburgh, even though Allegheny residents had voted against the move.⁶² Since the city is, as the Court had put it in another case, a "creature of the state"⁶³ the state could

53. Chris Hambrick, *Why Is Piedmont a Separate City From Oakland?*, KQED (Apr. 4, 2019), <https://www.kqed.org/news/11737575/why-is-piedmont-a-separate-city-from-oakland-2> [<https://perma.cc/76CZ-NYKG>].

54. *Beverly Hills' Thirst for Autonomy Saves the Day*, L.A. TIMES (Jan. 30, 1994), <https://www.latimes.com/archives/la-xpm-1994-01-30-we-16837-story.html> [<https://perma.cc/JM3Y-GCAD>].

55. Briffault, *Our Localism: Part, supra* note 32, at 358–59.

56. *See* Cain, *supra* note 46.

57. *See id.*

58. *See id.*

59. *See* GERALD E. FRUG ET AL., LOCAL GOVERNMENT LAW: CASES AND MATERIALS 433–34 (7th ed. 2022).

60. *Hunter v. Pittsburgh*, 207 U.S. 161, 177–79 (1907).

61. FRUG ET AL., *supra* note 59.

62. 207 U.S. at 178–79.

63. *City of Worcester v. Worcester Consol. St. Ry. Co.*, 196 U.S. 539, 549 (1905).

create, redesign, and even, as in the case of the City of Allegheny, uncreate the city, in whatever way the state sees fit. Residents had no constitutional due process, or contracts clause, claim against the state moving to change their local government's form or boundaries.⁶⁴

Later challenges to such moves grounded in Equal Protection claims also mostly failed. In *Town of Lockport v. Citizens for Community Action*, the Court was faced with a state-adopted election scheme for a county reorganization referendum that weighed differently the votes of residents in unincorporated parts of the county.⁶⁵ The Court found no violation of the one person one vote principle, allowing the state to adjust voting rights in accordance with its own perception of the varying degrees to which the reorganization would impact different areas.⁶⁶

Left by the federal Supreme Court to their devices, states, as the *Hunter* case showed, were often willing, during annexation's heyday, to enable cities to annex surrounding areas without consulting the residents, or landowners, in those annexed areas.⁶⁷ That changed following the failure of the Brookline annexation. States then set out to rewrite their laws.⁶⁸ The guiding principle became a commitment to the notion that an area should not be annexed unless its residents or owners so desired. In many states a veto right was thus granted to any area threatened with annexation.⁶⁹ Under revised annexation laws, residents now normally had to vote to approve the annexation of their area into an existing city and others — the state, the central city, the county — could not override their decision. Some New England states simply did away with annexation laws altogether.⁷⁰

64. *Hunter*, 207 U.S. at 177–79.

65. 430 U.S. 259, 260–64 (1977).

66. *See id.* at 270–73; *see also* In re Annexation Ordinance No. D-21927 Adopted by Winston-Salem, N.C., December 17, 1979-Area I, 303 N.C. 220, 278 S.E.2d 224 (N.C. 1981) (holding that not requiring those annexed to vote in approval did not conflict with principles of due process or equal protection).

67. *See* JACKSON, *supra* note 38, at 148. The 1854 consolidation of Philadelphia was accomplished through state law. Local referenda were not held on any of the annexations to Chicago prior to 1880. *Id.*

68. *See id.* at 152 (explaining that affluent suburbs were able to move state legislature away from the doctrine of forcible annexation).

69. *See, e.g.*, 4 ERNEST S. GRIFFITH, A HISTORY OF AMERICAN CITY GOVERNMENT: THE PROGRESSIVE YEARS AND THEIR AFTERMATH, 1900-1920, at 289 (1974) (“The local veto over boundary changes, on the part of both or all governmental units involved, came to be so rigid that only outside intervention by a higher power could break it.”).

70. *See* Briffault, *Our Localism: Part*, *supra* note 32, at 78 n.328.

Most state statutes also began banning the annexation of existing cities.⁷¹ This prohibition generated a dynamic with long-lasting impact in developing areas: defensive incorporation.⁷² Both Brookline's resistance to Boston and Allegheny's struggle with Pittsburgh involved a pre-existing community, more than a century old, that had eventually come to border a major city as the latter expanded. Brookline, Allegheny and similar cities had shed their original identity as rural or otherwise independent communities as nearby urban centers' economic clout encroached, transforming those previously standalone cities into suburbs. In other places, especially in less developed regions, suburban development occurred where no city existed to begin with. Subdivisions would be built in unincorporated parts of the county. These locations would be prime targets for annexation by the core city at whose gates they lay. But in a process that became most closely associated with twentieth-century Southern California, annexation would hardly ever occur in these circumstances.⁷³ Incorporation laws were liberalized, making it easy for those unincorporated areas to turn themselves into their own independent cities,⁷⁴ which, under the new rules, could not be annexed to other cities. The result was a race between major cities seeking to annex outlying areas and those areas themselves seeking to incorporate — and in this race, law put the major city at a disadvantage.⁷⁵

By the early decades of the twentieth century, if not earlier, annexation was thus no longer a meaningful tool for cities in California, the Midwest, and the Northeast. Suburbs became independent cities rather than sections of the adjacent central city. St. Louis would remain a small 61 square miles,⁷⁶ Boston an even smaller 48.⁷⁷ This phenomenon was the outgrowth of a legal reform. Detroit's map shows how the city's annexations ceased abruptly in 1926, as Michigan

71. See 2 McQUILLIN MUN. CORP. §§ 7.16, 7.22 (3d ed. 2022).

72. See JACKSON, *supra* note 38, at 152–53 (discussing Westchester County, New York).

73. See, e.g., Nicole Stelle Garnett, *Suburbs as Exit, Suburbs as Entrance*, 106 MICH. L. REV. 277, 285–87 (2007).

74. See Briffault, *Our Localism: Part II*, *supra* note 43, at 358–61.

75. See, e.g., GARY J. MILLER, MUNICIPAL INCORPORATION UNDER LAFCO: A CRITICAL VIEW 102–10 (1981) (discussing Southern California).

76. See COLIN GORDON, MAPPING DECLINE: ST. LOUIS AND THE FATE OF THE AMERICAN CITY 22 (2008).

77. See Ely Portillo, *Charlotte Annexations Keep Adding to City's Area*, UNIV. N.C. CHARLOTTE URB. INST. (July 7, 2021), <https://ui.charlotte.edu/story/charlotte-annexations-keep-adding-city%E2%80%99s-area> [<https://perma.cc/YC72-BPER>].

adopted a new annexation law rendering it impossible to annex incorporated communities.⁷⁸

At this point, the legal ruling in *Hunter v. Pittsburgh* became merely theoretical. The doctrine the case announced still famously reigns, but the fact pattern from which it is derived is now a relic. Today, federal law does not prevent a Pittsburgh from involuntarily annexing an Allegheny, but under state law Pittsburgh and cities like it are no longer empowered to annex the nation's Alleghenys without their consent to begin with.

II. SECOND ACT: POSTWAR SOUTHERN AFTERLIFE

For decades, however, this was not an accurate description of the legal reality reigning in the sunbelt. The pattern described in the previous Part did not prevail in much of the South.⁷⁹ The story of the decline of annexation as suburbanization marched on is largely a story of developments in the Northeast, Midwest, and California. Detroit's boundaries might have ceased expanding in 1926;⁸⁰ New York's made permanent in 1898;⁸¹ Boston's annexations after 1871 were minor (Hyde Park);⁸² and Chicago's twentieth century's annexations limited to O'Hare airport.⁸³ Between 1950 and 2010, however, Charlotte's territory swelled by 892%;⁸⁴ annexations expanded Memphis's footprint by 240% between 1960 and 2010;⁸⁵ Dallas grew from 40

78. See Laurence Michelmore, *Detroit – A Tale of Two Cities*, 29 NAT'L MUN. REV. 720, 720 (1940).

79. See Briffault, *Our Localism: Part II*, *supra* note 43, at 362.

80. See *Detroit Annexation 1806-1926*, DRAWING DETROIT (June 1, 2015), <http://www.drawingdetroit.com/detroit-annexation-1806-1926/> [<https://perma.cc/W8Q6-WKJC>] (charting the growth of Detroit).

81. See Richardson Dilworth, *Urban Infrastructure Politics and Metropolitan Growth: Lessons From the New York Metropolitan Region*, 6 PUB. WORKS MGMT. & POL'Y 200, 200 (2002).

82. See James C. O'Connell, *Book Review*, 92 NEW ENG. Q. 330, 331–32 (2019) (reviewing RONALD DALE KARR, *BETWEEN CITY AND COUNTRY: BROOKLINE, MASSACHUSETTS, AND THE ORIGINS OF SUBURBIA* (2018)).

83. See Edward McClelland, *Why Did Chicago Stop Growing?*, CHI. MAG. (Dec. 21, 2020, 4:41 PM), <https://www.chicagomag.com/news/december-2020/why-chicago-stopped-growing/> [<https://perma.cc/J7WJ-YX9J>].

84. See *Why American Cities are so Weirdly Shaped*, ECONOMIST (Dec. 22, 2018), <https://www.economist.com/united-states/2018/12/22/why-american-cities-are-so-weirdly-shaped> [<https://perma.cc/J7WJ-YX9J>].

85. See Mike Field, *Memphis Wants to Shrink*, MOD. CITIES (Feb. 13, 2017), <https://www.moderncities.com/article/2017-feb-memphis-wants-to-shrink> [<https://perma.cc/5PCN-JBED>].

square miles in the 1940s to 331 in the 1980s;⁸⁶ Tulsa tripled in size on March 18, 1966;⁸⁷ Albuquerque grew from 3 square miles to 150 square miles in fifty years.⁸⁸ Between 1950 and 1960 93% of population growth in the metropolitan South initially took place in independent communities — but only 55% to 60% of these new developments remained that way. Everything else was annexed.⁸⁹

Liberal annexation laws facilitated much of this dramatic annexation drive.⁹⁰ For example, North Carolina laws allowed cities, especially big ones, to involuntarily annex surrounding areas, if certain tests of “urbanity” were met.⁹¹ Until 1955 annexations in Tennessee were almost always accomplished through acts of the General Assembly, and thus with no regard to the desires of those annexed.⁹² When a general annexation statute was then adopted it permitted a city to unilaterally annex adjoining territory “as may be deemed necessary for the welfare of . . . the municipality as a whole.”⁹³ Home rule cities in Texas had unrestricted annexation powers, even without consent of the annexed, from 1913 through 1963. Even after that, the power of annexation could still freely be applied to unincorporated parts of a city’s extraterritorial jurisdiction (extending, under the statute, five miles from the city’s boundaries).⁹⁴ Laws in Oklahoma allowed a city to annex an area that did not consent to the annexation if three sides of that area were adjacent to or abutting property already within the

86. See Joel C. Miller, *Municipal Annexation and Boundary Changes*, in 53 THE MUNICIPAL YEAR BOOK 1986, at 72, 78–79 (1986).

87. See TULSA CITY COUNCIL, A HISTORY OF TULSA ANNEXATION 14–15 (2004), <https://www.yumpu.com/en/document/read/27952382/annexation-history> [<https://perma.cc/AAN2-RXQB>].

88. See William Watson et al., *How Big Should City Governments Be? Two Mayors Respond*, POL’Y OPTIONS, Sept. 2001, at 7.

89. See Matthew D. Lassiter & Kevin M. Kruse, *The Bulldozer Revolution: Suburbs and Southern History since World War II*, 75 J. S. HIST. 691, 697 (2009).

90. See DAVID RUSK, CITIES WITHOUT SUBURBS: A CENSUS 2000 UPDATE 17–22 (3d ed. 2003).

91. See N.C. GEN. STAT. ANN. §§ 160A-33–42 (repealed 2011).

92. See TENN. ADVISORY COMM’N ON INTERGOVERNMENTAL RELS., A COMPREHENSIVE REVIEW OF THE LAWS GOVERNING MUNICIPAL BOUNDARY CHANGES AND GROWTH PLANNING IN TENNESSEE (2013), <https://www.tn.gov/content/dam/tn/tacir/commission-meetings/2013-december/2013-12Tab5DRAFT.pdf> [<https://perma.cc/X7KQ-5A3K>] (“The claim that expanding cities’ boundaries is essential to economic growth is not clearly supported by studies of annexation. Case studies of individual cities show that annexation’s fiscal effects depend on a number of variables . . .”).

93. TENN. CODE ANN. § 6-51-102 (West) (effective Apr. 28, 2008).

94. See Municipal Annexation Act, 58th Leg., R.S., ch. 160, 1963 Tex. Gen. Laws 447.

city limits.⁹⁵ New Mexico law allowed a city to petition a commission to order an annexation if an area was contiguous and the city could provide it with services.⁹⁶

This dynamic materializes as the opposite of the one just seen as dominating in the Northeast, Midwest, and California. Certain commentators — most notably, the former Albuquerque mayor, Dean Rusk — have attributed the financial success of these sunbelt cities, and the attendant decline of legacy cities,⁹⁷ to these divergent paths.⁹⁸ Cities in the South and Southwest, unlike their older peers elsewhere, have been able to capture growth by annexing their emerging suburbs. Given this understanding, it is easy to see why some commentators lament the more recent curbs placed on annexation powers in these southern states — which the next Part will review.⁹⁹ Southern metro areas, previously spared the miseries of central city decline and segregation that befell their northern brethren, are allegedly destined to live that fate now that their annexation powers are finally being legally curbed.

This argument assumes that annexation laws are fully independent variables, that then, alone, generate economic realities in the relevant metropolitan area. But, of course, the law is never fully independent. Certain dynamics generate in some places in some times more liberal annexation laws, while other dynamics generate in other places or at other times less liberal annexation laws. The most effective way to isolate these dynamics that dictate changes in annexation laws and policies is to observe the moment at which annexation activity ceases. Thus a reconsideration of the shift in northern law can aid the effort to grasp the pattern of southern annexation laws that is of concern here. What factors had made annexations politically plausible, even facile, in the Boston region up to, but not past, the early 1870s? Why was Charlestown, with its long-decorated history as an independent community annexed to Boston, while the less famous Brookline

95. See OKLA. STAT. 11, § 21-103(A) (1977). Courts allowed cities to gain such adjoining property by simply annexing strips — that is, narrow corridors connecting the city to the area it actually seeks to annex. See Kristen M. O'Connor, *Losing Ground: Seminole and the Annexation Power of Municipalities in Oklahoma*, 58 OKLA. L. REV. 527, 527–28 (2005).

96. See N.M. STAT. ANN. § 3-7-15 (West 2022).

97. Also known as older industrial cities. See LAVEA BRACHMAN, BROOKINGS, *THE PERILS AND PROMISE OF AMERICA'S LEGACY CITIES IN THE PANDEMIC ERA* (2020), <https://www.brookings.edu/research/the-perils-and-promise-of-americas-legacy-cities-in-the-pandemic-era/> [<https://perma.cc/N2TU-7E84>].

98. See RUSK, *supra* note 17, at [26].

99. See *infra* Part III.

remained independent? Why did annexation laws in Massachusetts and elsewhere in the region then change so abruptly? To understand its southern afterlife, we must go back to more closely dissect annexation's first demise in the North.

Historians often point at different communities' varying ability to pay for vital infrastructure—at the time, mostly water — as an important explaining factor.¹⁰⁰ After the Civil War, when industrialization and immigration caused urban populations to explode, cities had to provide extended, and often novel, services.¹⁰¹ The American city of the late nineteenth century was different from its predecessors not only in scale, but also in function. A particularly important new city service, vital for the alleviation of poor hygienic conditions in newly congested cities was the public provision of water.¹⁰² Waterworks, however, were an extremely expensive infrastructure to put in place.¹⁰³ Their installation in Boston, for example, was a major achievement marked by great public fanfare.¹⁰⁴

Boston could afford the great expense this endeavor necessitated because it had a relatively big tax base. Smaller communities at the city's outskirts were not as tax wealthy.¹⁰⁵ Furthermore, water supply represents a clear instance of economies of scale. It is a service where the average costs per unit of output decrease with the increase in the scale of output. Pumping water from its source and then storing and transporting it into the city is the costliest move. The costs of piping another neighborhood in the city to share in the consumption of the already pumped and transported water pale in comparison.¹⁰⁶ The larger the community consuming the water, therefore, the lower the cost of water per consumer. For a small, under-developed community, this made the appeal of annexation to the larger city almost

100. See Tyson, *supra* note 16, at 327–28.

101. See MICHAEL RAWSON, EDEN ON THE CHARLES: THE MAKING OF BOSTON 15 (2010); WILLIAM J. NOVACK, THE PEOPLE'S WELFARE: LAW AND REGULATION IN NINETEENTH-CENTURY AMERICA 1, 16, 195 (1996).

102. See CARL SMITH, CITY WATER, CITY LIFE 3 (2013) (quoting a document prepared by the Philadelphia department of water in 1860 that announced: "The water supply to a great city is necessarily one of the most important and interesting features, upon which depends, to a greater extent, possibly, than any other advantages, either natural or artificial, its ultimate growth and prosperity").

103. See *id.* at 11–14.

104. See MICHAEL RAWSON, EDEN ON THE CHARLES 75 (2010).

105. *Id.* at 156.

106. See, e.g., RAWSON, *supra* note 104, at 109 (reproducing a map indicating the complexity of getting water from sources into Boston).

irresistible.¹⁰⁷ This explains much of the reasoning behind the annexation to Boston of Charlestown and Roxbury, both of which lacked the means to provide environmental services that Boston could supply.¹⁰⁸

The calculation a community relied on to decide whether annexation was worthwhile could be very different for a more developed, more affluent, community. Such a community could afford the higher costs of providing its own water (and other) infrastructure. Brookline was exactly such a community.¹⁰⁹ For decades, it had functioned as a bedroom community for Boston's elite, a place where the wealthy kept country estates. Boston's resources could not easily blind Brookline, the home of the nation's first "country club"¹¹⁰ and the place that dubbed itself "the richest town in the world."¹¹¹

Freed from the financial need to attach themselves to a bigger, more established city, these affluent suburbanites could act on their exclusionary instincts — on their sense, that is, of being socially distinct. They would rather not share their tax base with poorer city residents, whom they perceived as socially inferior: working class, immigrant and Catholic.¹¹²

Brookline was merely the harbinger of a dynamic that would occur elsewhere later. In the ensuing decades, more communities at the outskirts of the major cities of the North could afford to act on similar exclusionary preferences.¹¹³ As time went by, such communities could much more easily do so. Suburban communities were turning richer and new technologies rendered certain infrastructures somewhat cheaper.¹¹⁴ The introduction of, or reforms to, certain legal tools, namely special districts and inter-local contracts, that could facilitate the provision of local services also helped. Special districts would replace the city in providing a given service.¹¹⁵ Inter-local contracts allowed new cities to contract with other local governments, such as the

107. See JON C. TEAFORD, *CITY AND SUBURB: THE POLITICAL FRAGMENTATION OF METROPOLITAN AMERICA, 1850-1970*, at 77 (1979) ("During the nineteenth century, suburban residents . . . sought annexation or consolidation because of the superior municipal services offered by the central city.").

108. See RAWSON, *supra* note 104, at 151, 154–55.

109. See *id.* at 167–69.

110. See *id.* at 171.

111. See *id.* at 163.

112. See JACKSON, *supra* note 38, at 150–51.

113. See *id.* at 149.

114. See TEAFORD, *supra* note 107, at 78.

115. JACKSON, *supra* note 38, at 152–53. On special districts generally, see Nadav Shoked, *Quasi-Cities*, 93 B.U. L. REV. 1971 (2013).

county, for service provision. By relying on a more regional special district or contracting with another entity for the provision of expensive services, the new incorporated suburb could enjoy economies of scale that beforehand could only be achieved through annexation.¹¹⁶ Once it no longer needed to establish its own new services, the price a community had to pay for incorporation decreased. This contractual mechanism, fully developed in Southern California and known as the “Lakewood Plan,” averted many annexations in that area.¹¹⁷

From this earlier experience with annexation a clear conclusion emerges. Annexation’s prevalence is a function of costs: the higher the costs of independently providing a vital local service, the likelier a developing area is to be annexed to the developed core city. The lower the costs of independently providing a vital service — due to the area’s own affluence, or the service’s reduced price — the likelier an area is to resist annexation. For exclusionary reasons, like the desire to not share their taxes or associate with poorer residents, suburbanites are prone to opt for independence.¹¹⁸ But they need to be able to pay for it. Allegheny’s residents of course would have rather not be taxed to benefit Pittsburgh, but resistance to annexation was feasible for them only because their own city had already established “satisfactory water supply.”¹¹⁹ If suburban communities are at lower stages of development, when they both need more infrastructure and are less likely to be able to fund it, they cannot afford independence, no matter how much they might want it.

With an appreciation of the dynamics behind the earlier pattern that unfolded in the North, annexation’s turn in the South may be more accurately understood. The persistence of annexation in the South throughout the twentieth century was not a product of a particular regional taste for annexation, or of some regional legal exceptionalism. Rather, it reflected the different time frame during which southern suburbs developed.

116. In 1892 the Village of Wilmette, Illinois, signed a contract with Evanston to get its water supply from that city. *See* *Nw. Univ. v. Vill. Of Wilmette*, 82 N.E. 615, 619 (1907). Two years later, it refused annexation to the city. *See* THE ENCYCLOPEDIA OF CHICAGO, <http://www.encyclopedia.chicagohistory.org/pages/1360.html> [https://perma.cc/FX8P-64DT] (last visited Feb. 14, 2023).

117. *See* GARY J. MILLER, *CITIES BY CONTRACT: THE POLITICS OF MUNICIPAL INCORPORATION* 34–37 (1981).

118. *See* TEAFORD, *supra* note 107, at 77–84 (linking suburban incorporations to the declining need for city services and rising concerns about urban corruption).

119. *Hunter v. City of Pittsburgh*, 207 U.S. 161, 180 (1907).

Population migration and industrial movement into the sunbelt was largely a postwar phenomenon. Thus, in many cases, when cities like Charlotte and Memphis were annexing their outlying areas, those areas were still relatively underdeveloped.¹²⁰ The outlying areas were rural,¹²¹ often owned by a few owners seeking to subdivide them to construct housing. These outlying communities had limited resources of their own. Owners there, especially if they were prospective subdividers, had a strong incentive to attain the benefits of established city services.¹²² Indeed, mere association with a more established community could add to their holdings' property values.¹²³ Economic factors generated the southern appetite for annexations.

As the experience of places like Boston, Chicago, New York, and Detroit had shown, however, this state of affairs could not last forever. As economic activity levels increase in a metropolitan region, outlying areas grow less economically inferior to the center.¹²⁴ They become affluent enough to provide their own services. They end up populated not by potential subdividers but by residents who have moved into the subdivisions and now hold their own preferences. Outlying areas then express less enthusiasm for annexation.¹²⁵

The postwar southern pattern of pervasive annexations — so out of line with the contemporaneous northern patterns — merely mirrored

120. See Richard Lloyd, *Urbanization and the Southern United States*, 38 ANN. REV. SOCIO. 483, 485 (2012) (“The unique history of the American South placed it outside of the central tendencies of modernity, including urbanization, for much of American history.”).

121. C. Vann Woodward, who famously mourned the economic revolution the postwar South underwent, singled out the bulldozer as the “advance agent of the metropolis. It encroaches upon rural life to expand urban life.” C. VANN WOODWARD, *The Search for Southern Identity*, in THE BURDEN OF SOUTHERN HISTORY 3, 6 (3d ed. 1993).

122. See Russell M. Smith, *City Limits? The Impact of Annexation on the Frequency of Municipal Incorporation in North Carolina*, 51 SE. GEOGRAPHER 422, 431 (2011) (noting that developers in the outskirts of a city often desire to receive through annexation urban services such as access to public water and sewer systems); Judith Welch Wegner, *North Carolina's Annexation Wars: Whys, Wherefores, and What Next*, 91 N.C. L. REV. 165, 253 (2012) (noting that “voluntary annexation [is] often used to capture the creation of new subdivisions upon the request of developers”).

123. See Wegner, *supra* note 122, at 256.

124. See, e.g., Robert H. Freilich & Bruce G. Peshoff, *The Social Costs of Sprawl*, 29 URB. LAW. 183, 189–92 (1997) (discussing how sprawl entails the continuous shift of affluent population and employers further and further away from the center that then experiences decline).

125. See Mary M. Edwards, *Municipal Annexation: Does State Policy Matter?*, 28 LAND USE POL'Y 325, 331 (2011) (finding high-density cities and cities with larger populations and growth rates annexed more frequently, as did cities with more undeveloped nearby land).

the earlier developments in places like Boston, New York, Chicago and Detroit. Southern cities in the sunbelt were experiencing the same development cycle that those other regions had experienced a century to half a century earlier. It is within this context that the recent reforms to annexation laws in those southern places must be assessed.

III. FINAL ACT: TWENTY-FIRST CENTURY ULTIMATE DEMISE

The opening salvo in the 2010s drive to reform annexation laws in states that had up to then remained open to the practice was fired in North Carolina. As already noted, the state had a rather permissive annexation regime. In the first decade of the twenty-first century, however, residents of outlying began fighting the practice: seeking to block city moves to annex them and even attempting to de-annex themselves. They brought lawsuits and heavily lobbied the legislature.¹²⁶ The first effort for statutory reform died in 2010. But following that year's midterm elections, North Carolina municipalities finally lost what one commentator later dubbed the state's "annexation wars."¹²⁷ Through amendments passed in 2011 and 2012, the state legislature prohibited involuntary annexations.¹²⁸ These amendments empowered residents to vote and block their annexation into a neighboring city.¹²⁹

Other states soon replicated North Carolina's reforms. That same year, 2011, Oklahoma removed the statutory exceptions that had allowed for annexation without consent of the annexed.¹³⁰ After placing a moratorium on unilateral annexations in 2013, the Tennessee General Assembly completely repealed the statute that allowed involuntary annexations in 2015.¹³¹ Texas followed suit in 2017, adopting the "Municipal Annexation Right to Vote Act," which essentially removed the power to involuntary annex from cities in major metropolitan areas (counties with a population of more than

126. See, e.g., *Barefoot v. City of Wilmington*, 306 F.3d 113 (4th Cir. 2002).

127. See *Wegner*, *supra* note 122, at 169.

128. See Act of June 18, 2011, ch. 173, §§1–2, 2011 N.C. Sess. Laws 668, 668–69, repealed by Act of May 30, 2012, ch. 3, §5, 2012-1 Adv. Legis. Serv. 5, 5 (LexisNexis); Act of June 18, 2011, ch. 177, §§1, 3, 2011 N.C. Sess. Laws 680, 680–82, repealed by Act of May 30, 2012, ch. 3, §5, 2012-1 N.C. Adv. Legis. Serv. 5, 5 (LexisNexis).

129. See Act of May 30, 2012, ch. 11, §1, 2012-1 N.C. Adv. Legis. Serv. 25 (LexisNexis).

130. See OKLA. ST. ANN. CITIES OR TOWNS – ANNEXATION PROCEDURES 11, § 21-103 (2011); the repealed exceptions were discussed in *supra* note 100.

131. See TENN. CODE ANN. § 6-51-122 (West 2022); 2015 Tenn. Pub. Acts ch. 512.

500,000).¹³² Laws in at least a dozen other states, which were not as liberal in permitting involuntary annexation to begin with, were also reformed.¹³³

With these new laws from the past decade, the era of great local annexations in America has probably come to an end. The outliers that allowed for involuntary annexation mostly disappeared,¹³⁴ as laws in the South caught up with the North. And if forced annexation is off the table, annexation's incidence inevitably, and dramatically, decreases. As the preceding Part noted, this legal change is hardly surprising and cannot simply be attributed to the peculiar political circumstances of the decade and the 2010 midterm elections that launched it.

In their specific details, the recent laws instituting the reforms often (albeit not always) belie the simplistic narrative connecting them to the contemporaneous, and troubling, laws referred to as the new preemption. They embody much more than mere anti-urban political biases. They display a focus on costs, wholly in line with the story of annexation's course as highlighted in this Essay. At least four themes that can be found in these new laws illustrate this focus.

First, many laws put the potential provision of cheaper infrastructure, particularly water supply, at the center of the process surrounding an annexation move. For example, in North Carolina, under already-existing state laws, annexing municipalities had to provide water and sewage to annexed areas. The new state law further provides that if the city initiates an annexation, it must provide those services at no hookup cost to the new consumers.¹³⁵ The law thus even more forcefully than before reflects the traditional justification for annexation.¹³⁶ A 1999 Arkansas law declared that if the annexing city fails to provide utility service to the area annexed within three years

132. *See* Municipal Annexation Right to Vote Act, TEX. LOC. GOV'T CODE § 43 (West 2019). Only minor exceptions are recognized: enclaves within a city's extra territorial jurisdiction, industrial districts, navigable streams, and land that qualifies for agricultural use, wildlife management use, or timber land.

133. *See infra* notes 135–63.

134. Nebraska is the striking exception. Its laws allow a “city of the metropolitan class” — i.e., Omaha — to annex any adjoining city with a population below 10,000 without that city's consent. NEB. REV. STAT. ANN. § 14-117 (West 2022). A particularly aggressive such move was approved in *City of Elkhorn v. City of Omaha*, 725 N.W.2d 792 (Neb. 2007). Kansas also still allows for unilateral annexation, but only in very specific circumstances, mostly dealing with abnormal city boundaries. *See* KAN. STAT. ANN. § 12-520 (West 2022).

135. *See* N.C. GEN. STAT. ANN. § 160A-58.56 (West 2022).

136. *See supra* Part II.

(expanded to eight years in 2011)¹³⁷ the annexation can be undone.¹³⁸ A 2013 law further provides that the annexing city must halt all future annexations until such service is provided to the already annexed areas.¹³⁹ The 2017 Texas law mandating that all annexations in populous areas be voluntary also required cities to clearly share with areas considering annexation the level of service they intend to provide.¹⁴⁰ Two years later, Texas further amended the statute to ban cities from retaliating against areas rejecting annexation by raising water prices they charge those areas.¹⁴¹ Following a 2015 reform, Utah now requires a service provision feasibility study be completed before an annexation is approved.¹⁴² These disparate reforms make explicit the underlying consideration driving annexations throughout American history — the need to accommodate outlying areas' infrastructure needs at an efficient cost.

Second, the new laws at times pay special attention to the potential plight of poorer outlying areas, when necessary even overriding the desires of stronger neighboring cities.¹⁴³ North Carolina's law creates a special process allowing areas where a majority of residents have incomes of less than 200% of the poverty line to force a neighboring municipality to annex them.¹⁴⁴ Certain limitations apply respecting the area's size and the degree to which it is contiguous to the more affluent city. Additionally, and signaling that this provision was not a mere attack on richer urban centers, the law limits such forced annexations in cases when the costs of providing water and sewage will cross a certain threshold.¹⁴⁵ Arkansas's new law forbids a city from continuing to claim extraterritorial jurisdiction powers over an area it had promised to annex — powers allowing it to police residents of that outlying area — for more than five years unless it moves to annex the area.¹⁴⁶ New Mexico now makes it more difficult to annex a “traditional historic community” — an unincorporated, but identifiable, village or neighborhood that has existed for more than a

137. See ARK. CODE ANN. § 14-40-608 (West 2022).

138. See 1999 Ark. Acts 128.

139. See 2013 Ark. Acts 1502.

140. See TEX. LOC. GOV'T CODE ANN. § 43.0672 (West).

141. See 2019 Tex. Sess. Law Serv. ch. 922 (West).

142. See 2021 Utah Laws ch. 112.

143. On the general problem of rural poverty and annexation as a potential local government law tool to remedy rural blight, see Ann M. Eisenberg, *Rural Blight*, 13 HARV. L. & POL'Y REV. 187, 223 (2018).

144. See N.C. GEN. STAT. ANN. § 160A-31(b)(1) (West).

145. See *id.* § 160A-31(d)(2) (West).

146. See ARK. CODE ANN. § 14-40-208 (West).

hundred years.¹⁴⁷ The law has already been used to shield an indigenous community, El Prado, from Taos's recurrent annexation attempts.¹⁴⁸ Even if in different ways and to different degrees, these laws run counter to the traditional, and bemoaned, tendency of American annexation laws to make the desires of the more affluent actors the ruling criteria in annexation decisions.¹⁴⁹

Third, several states now force the two parties directly involved in an annexation — the annexing city and the annexed area — to consider the financial costs the annexation might impose on other governments. Under a law Arizona passed in 2014, an annexing city must coordinate with the county providing the area with street lighting and assume its costs.¹⁵⁰ A 2011 Montana law requires consultation with the county (which stands to lose some of the taxes from the unincorporated area that will be annexed) and gives the county the right to challenge an annexation in court. It also requires an annexation plan to account for the orderly transfer of services.¹⁵¹ Utah similarly requires notice to the county and gives the county a right to object.¹⁵² Illinois just mandates notice,¹⁵³ while North Dakota requires notice not just to the host county but to each county, city, or township affected.¹⁵⁴ Georgia adds required notice to affected school districts.¹⁵⁵ These laws all acknowledge that an annexation financially affects multiple governments — not just the annexing government.

Finally, some laws adopt a broader, more regional oriented vision of annexation. They not only mandate notice to, or involvement of, other governments in the annexation process, but specifically aim at a cooperative process. They can thus come close to an idea of annexation as part of a regional attempt at rational planning, rather

147. See N.M. STAT. ANN. § 3-7-1.1 (West).

148. See Will Hooper, *El Prado Receives "Historic Community" Designation*, TAOS NEWS (Jan. 20, 2021), https://www.taosnews.com/news/local-news/el-prado-receives-historic-community-designation/article_bdd70f7d-8255-51bf-bdb8-76516b57a6e2.html [<https://perma.cc/8X26-92TE>].

149. See Briffault, *Our Localism: Part*, *supra* note 32, at 81 (making the observation respecting American law).

150. See 2014 Ariz. Legis. Serv. ch. 134 (West); *see also* 2012 Fla. Sess. Law Serv. Ch. 2012-251 (West) (special law providing that no matter if any unincorporated area in a certain fire protection district, the district will continue to provide fire services and the annexing city must keep paying the district in perpetuity).

151. See 2011 Mont. Laws ch. 186 (H.B. 575).

152. See UTAH CODE ANN. § 10-2-407 (West 2022) (allowing protests by "affected entities"); *id.* § 10-2-401 (West) (defining counties as affected entities)

153. See 65 ILL. COMP. STAT. ANN. 5/7-1-13(b) (West 2023).

154. See N.D. CENT. CODE ANN. § 40-51.2-05 (West)

155. See 2022 Ga. Laws 785.

than a unilateral move taken as part of inter-governmental competition. Washington's new law allows, even without residents' consent, annexation via inter-local agreement between the city and the county covering the unincorporated land if all other local governments providing services consent.¹⁵⁶ In 2010 Wisconsin barred satellite annexations (the annexation of noncontiguous land) even if all parties agree to annexation.¹⁵⁷ Tennessee's law creates an opening for such annexations if the satellite area is within the city's urban growth boundary and consists of land used for industrial, commercial, or future residential development.¹⁵⁸ It also institutes procedures to limit the ability of one or a few holdout owners to derail an annexation.¹⁵⁹ In 2016 Oregon adopted a law allowing a contiguous area that is included in a city's comprehensive plan to force the city to annex it.¹⁶⁰ As a court later explained, "[the law] was intended to prevent local voters from unilaterally preventing the development of land that was placed within the urban growth boundaries of cities specifically for the purpose of development."¹⁶¹ The goal was to block residents from interfering with the overall plan already adopted for the area. It was, in other words, a clear anti-NIMBY measure: fending off neighbors' attempts to stop construction or land uses they deem undesirable. The pre-annexation feasibility study the Utah law requires must not only review fiscal effects on all relevant and surrounding governments, as mentioned above, but also determine "whether the proposed annexation will hinder or prevent a future and more logical and beneficial annexation or a future logical and beneficial incorporation."¹⁶² Arkansas's 2013 amendment requires that annexations not create enclaves — unincorporated improved or developed areas that are enclosed within a single city.¹⁶³ Oklahoma's law banning involuntary annexations also addressed some completely voluntary ones.¹⁶⁴ It barred the annexation of land by a connecting strip serving no municipal purpose other than

156. See 2020 Wash. Legis. Serv. ch. 142 (West). In 2012, New York state provided for a process for two municipalities to agree to a joint resolution for annexation. See 2012 N.Y. Sess. Laws S. 4359-A (McKinney) (codified at N.Y. GEN. MUN. LAW §§ 703, 704, 707, 711 & 713). Such annexation by resolution still requires a majority vote of the area to be annexed, though. See *id.*

157. See 2009–2010 Wisc. Legis. Serv. 366 (West).

158. See TENN. CODE ANN. § 6-51-104(d)(1) (West)

159. See 2018 Tenn. Pub. Acts ch. 1047.

160. See OR. REV. STAT. ANN. § 222.127 (West)

161. *City of Corvallis v. State*, 464 P.3d 1127, 1133 (Or. Ct. App. 2020).

162. UTAH CODE ANN. § 10-2-413 (West 2023).

163. See ARK. CODE ANN. § 14-40-504 (West 2023).

164. See OKLA. STAT. ANN. tit. 11, § 21-103(A) (West 2023).

to establish statutory contiguity. These laws attempt to inch annexation a bit closer toward its alleged goal: supplying regional solutions to fragmented metropolitan areas.

As these examples show, the new annexation laws do more than merely abolish the option of involuntary annexation — in the few southern places where such annexations were still legally possible at the dawn of the twenty-first century. The new laws address multiple issues pertaining to annexation in the South and elsewhere. Their specificity exhibits great sensitivity not only to political pressures in the interface between annexing city and annexed area, but also, and perhaps more impactfully, to several real world policy concerns that annexation raises. Most prominently, many of the laws address issues of costs. They treat annexation as a tool that can, and should, alleviate infrastructure costs in developing areas, but one that can also generate financial costs for governments operating in metropolitan areas. The laws express more than mere anti-urban, or even anti-annexation, bias. They convey the basic truth that annexation dynamics are, as perhaps they must be, geared toward dealing with costs.

Of course, and as noted throughout, these laws still have mostly put an intentional and effective end to involuntary annexations in most of the country. By turning involuntary annexation into a historical artifact, they have almost certainly made sure that dramatic expansions of American cities would no longer occur.¹⁶⁵ But, especially given the myriad values these laws express, is that an inescapably lamentable development?

IV. A NUANCED NORMATIVE LEGACY

Common wisdom notwithstanding, the answer to the previous Part's final question might be no. In these closing paragraphs, this Essay briefly engages the normative discourse surrounding annexation. It employs the experience of southern cities, where annexation continued to prevail even after it receded into memory elsewhere, to cast some doubt on the enthusiasm that annexation often generates among certain scholars. Anti-annexation laws are not inherently, or only, anti-city laws. Thus, the new annexation laws normatively stand apart from the new preemption laws.

165. Cities can of course still grow, but only of outlying areas desire to join the city. Charlotte, for example, grew by roughly a square mile between 2018 and 2019. See Ely Portillo, *Charlotte is Growing, Literally, As the City Annexes More Land*, UNIV. N.C. CHARLOTTE URB. INST. (Sept. 4, 2019), <https://ui.charlotte.edu/story/charlotte-growing-literally-city-annexes-more-land> [<https://perma.cc/5C46-Z3VE>].

A popular understanding of annexation views it as a vital tool that central cities should have in their arsenal. Commentators tend to draw lessons from annexation's first act — from its brief heyday and dramatic demise in the Northeast, Midwest and California. There they find evidence for the proposition that to thrive, a city must be able to readily annex outlying areas.¹⁶⁶ Deprived of the power to force developing areas to join in, the central city must witness how the metropolitan's most prosperous areas avoid its sphere.¹⁶⁷ The result is that the central city cannot enjoy the expanded tax base of its burgeoning suburbs, and that, in the absence of one central government, regional development proceeds with no guiding hand. The many misfortunes of metropolitan fragmentation that have come to afflict the Northeast, Midwest, and California — urban decline, racial and economic segregation, failing schools, and more — can at least partially be laid at the feet of annexation's demise.¹⁶⁸ Central cities in those parts of the country found themselves with an ever-decreasing slice of the metro tax base and an ever-increasing slice of its poorer population.¹⁶⁹ They had to deal with all attendant social burdens while incapable of adopting any integratory policies.¹⁷⁰ It then follows that the recent southern turn against annexation portends similar woes for the heretofore growing cities of that region.¹⁷¹ If annexation's story is a story of American attitudes toward central cities, with lax annexation laws reflecting support for central cities, annexation's demise can never present a good policy for cities.

166. See Wegner, *supra* note 122, at 253 (“Empirical research demonstrates . . . that growth and annexation are directly linked . . .”); Smith, *supra* note 122, at 426 (“[M]unicipalities that are able to grow (elastic) their city limits will be better able to capture fleeing tax revenue. Inelastic municipalities will not have as great a chance to grow their population or tax revenues due to suburbanization and growth on the fringes of cities.”).

167. See Olga Smirnova & Jerry Ingalls, *The Influence of State Annexation Laws on the Growth of Selected Southern Cities*, 47 SE. GEOGRAPHER 71, 78–80 (2007) (finding that where involuntary annexations were restricted, growth within metropolitan statistical areas occurred primarily in suburbs rather than in central cities).

168. See Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 STAN. L. REV. 1115, 1117 (1996) (noting that for some annexation was the way to generate metropolitan governance that could prevent the ills of fragmentation).

169. RUSK, *supra* note 17, at 48.

170. See *id.* at 41.

171. See, e.g., Bell, *supra* note 13, at 713 (observing the literature respecting northern cities and then arguing that its new annexation regime “may lead to detrimental financial consequences for municipalities, metropolitan regions, and the entire State of Texas”).

The added layer to annexation's story that this Essay provides should somewhat complicate this normative account. If the theme running through annexation's descriptive story has been costs, rather than mere anti-urban bias, its normative story also becomes more nuanced. As seen, annexation's popularity — whether in nineteenth-century New England or the postwar sunbelt — did not necessarily or wholly owe to some political commitment, or sentimental attachment, to the role of central cities. Rather, it reflected (and did not create) the relative under-development and economic subservience of outlying areas. Annexation triumphs when it is in the economic best interests of outlying areas — when those areas can derive a benefit, in terms of infrastructure costs, from accession to the city.¹⁷²

If annexation tends to proceed when it serves outlying areas, there is no reason to presume that it is inherently, and necessarily, always in the financial best interests of the central city. Indeed, there are good reasons to question that assumption — which current data also does not support.¹⁷³ Outlying areas seek annexation to receive the city's services, meaning that the city must extend its infrastructure to those outlying areas, often at its own expense. After annexation, the already developed areas of the city end up subsidizing the developing ones. Current residents in the city center fund the new residents moving into the outlying suburbs. The current city infrastructure, funded through the tax payments of those living in the existing city core, is now extended to serve new properties. The subsidy, by definition, encourages development at the urban periphery (by rendering it cheaper) and thus annexation in fact supports the hollowing out of the city center. Rather than have developers or new residents pay the full costs of providing services to the new housing they build or occupy in outlying areas, the central city partially, if not fully, pays the bill. The cross-subsidy has troubling redistributive undertones, seeing that older inner-city residents are likely to be poor and minority, while new suburbanites are often more affluent.

Such short-term effects notwithstanding, annexation could perhaps be predicted to have beneficial long-term distributive effects. Indeed,

172. See *Nolan v. Vill. of Marvin*, 624 S.E.2d 305, 308 (N.C. 2006) (“The primary purpose of involuntary annexation . . . is to promote ‘sound urban development’ through the organized extension of municipal services to fringe geographical areas. These services must provide a meaningful benefit to newly annexed property owners and residents . . .”).

173. See TENN. ADVISORY COMM’N ON INTERGOVERNMENTAL RELS., *supra* note 92 (“The claim that expanding cities’ boundaries is essential to economic growth is not clearly supported by studies of annexation. Case studies of individual cities show that annexation’s fiscal effects depend on a number of variables . . .”).

annexation is frequently offered as a solution to the broader redistributive problems plaguing metropolitan areas.¹⁷⁴ As already noted, annexation is supposed to assure the city the ability to retain the tax payments of affluent residents who move from the center to outlying areas in search of larger single-family homes.¹⁷⁵ Through annexation, the fiscal upside of growth is retained within city coffers and can then — theoretically — be shared with the poorer inner-city residents. Affluent suburbanites (or retail and industry) are prevented from isolating themselves in legally independent communities.

Unfortunately, theory cannot trump the political and social realities of American life. Given unyielding exclusionary instincts dictating political distributive decisions, the notion that an expanded city will redistribute funds from the affluent suburban arrivals to poorer, less white, inner-city residents seems quite far-fetched.

Education, perhaps the most important service local governments provide, and where the importance of integration and sharing of resources is most often alluded to, provides a telling example. Experience shows that in a consolidated region schools will not necessarily be shared: often, annexed areas preserve separate school districts. For example, starting in the 1950s Ohio allowed annexed areas in some cases to not join the annexing city's urban school system.¹⁷⁶ Accordingly, multiple school districts cover areas that are now part of the city of Columbus. To render Indianapolis's merger with Marion County (to form UniGov) politically possible, schools had to be kept separate.¹⁷⁷ When the Omaha school district relied on the state's liberal annexation laws to annex school districts covering areas that had already been annexed to the city, the state legislature sprang into action to maintain separate school districts.¹⁷⁸ Even when, unlike in these cases, school systems are consolidated to cover the whole city, data shows that more affluent areas routinely enjoy better-funded services.¹⁷⁹ Clearly, annexation largely fails to redistribute educational funds to those in need.

174. See, e.g., Reynolds, *supra* note 17, at 253.

175. See *supra* notes 166–67 and accompanying text.

176. See OHIO REV. CODE ANN. § 3311.06 (West 2017).

177. See William Blomquist & Roger B. Parks, *Fiscal, Service, and Political Impacts of Indianapolis-Marion County's Unigov*, 25 PUBLIUS: J. FEDERALISM 37, 40 (1995).

178. See Sam Dillon, *Law to Segregate Omaha Schools Divides Nebraska*, N.Y. TIMES (Apr. 15, 2006), <https://www.nytimes.com/2006/04/15/us/law-to-segregate-omaha-schools-divides-nebraska.html> [<https://perma.cc/6FS3-UD9H>].

179. See, e.g., Nadav Shoked, *The New Local*, 100 VA. L. REV. 1323, 1394 (2014) (noting that majority-minority schools are systemically underfunded as compared to majority schools with which they share a school district).

While not touching on annexation law issues, the unfortunate recent saga of the attempt to consolidate the Memphis school district also illustrates this phenomenon. In 2011, the Memphis School Board, in a decision approved by the City's voters, dissolved. Under existing Tennessee laws, the responsibility over the schools then shifted to the relevant county's board of education. Practically, the city school district (unilaterally) merged into the Shelby County School District that before only served the suburbs.¹⁸⁰ Those suburbs immediately fought back to refrain from sharing their resources with the city schools.¹⁸¹ The state law was amended that same year to make it easier for those suburban communities specifically to secede from the consolidated district and incorporate new school districts.¹⁸² The six incorporated municipalities in Shelby County immediately did so, and when a court struck down the statute in 2012¹⁸³ it was re-passed to comply with the court's requirements and the six suburban municipalities re-seceded in 2013.¹⁸⁴

Finally, if annexation were a sure formula for shifting otherwise-lost money into central cities, those cities would always back annexation. And yet, some of the cities that are supposed to be the victims of recent anti-annexation laws do not share this unyielding enthusiasm for annexation.¹⁸⁵ They sometimes even seek to de-annex. In reaction to the state's earlier moves toward reform in the early 2000s Memphis

180. For a full account and analysis see, for example, Michelle Wilde Anderson, *Making A Regional District: Memphis City Schools Dissolves into Its Suburbs*, 112 COLUM. L. REV. SIDEBAR 47, 53 (2012).

181. Erica Frankenberg, *Segregation by District Boundary Line: The Fragmentation of Memphis Area Schools*, 46 EDUCATIONAL RESEARCHER 449, 452–53 (2017).

182. See TENN. CODE ANN. § 49-2-502(b) (2016).

183. See Bd. of Educ. of Shelby Cnty., Tenn. v. Memphis City Bd. of Educ., 911 F. Supp. 2d 631, 660 (W.D. Tenn. 2012).

184. See Ashley Crockett, *All Suburbs Vote “Yes” For Municipal School Districts*, WREG NEWS (July 16, 2013), <https://wreg.com/news/absentee-early-voters-say-yes-to-municipal-districts/> [<https://perma.cc/C63G-MGCQ>].

185. Another example is Columbus, Ohio, the exceptional Midwestern city that continued to annex throughout the twentieth century. In 2003, the City's new mayor announced a reversal in policy, explaining that annexations have not necessarily served city interests. His new policy was dubbed “Pay as you Grow” and held that developers and residents of new annexations have to bear some of the infrastructure costs associated with adding that land to the city. See Alexander Tebbens, *Annexation and Mayor Sensenbrenner: The Story of How Columbus Grew to be the Largest City in Ohio*, TEACHING CLEVELAND, <https://teachingcleveland.org/annexation-and-mayor-sensenbrenner-the-story-of-how-columbus-grew-to-be-the-largest-city-in-ohio-by-alexander-tebbens/> [<https://perma.cc/W6HC-ZV4E>] (last visited Feb. 16, 2023).

formed a task force to determine the actual value of annexation.¹⁸⁶ The recommendations the city received were sobering. The course of action suggested was not only to slow down annexations, but to actually consider de-annexing recently annexed areas. This was seen as a way to de-sprawl the region. Memphis had become larger in size than Chicago, but with only a fraction of the density. Simply put, Memphis had spread itself too thin. Municipal budget, the recommendations suggested, should be re-prioritized to enhance services to existing neighborhoods. The areas recommended for de-annexation were low density, rural areas with little infrastructure like sewer systems. De-annexing these areas would have realized almost one million dollars in net savings in the short term. In the long term, not being on the hook for deferred infrastructure maintenance costs and planned public safety facilities could have offered the potential for significant cost-savings.¹⁸⁷ To solve its problems Memphis did not need more annexations — it needed less.¹⁸⁸

If annexation were a panacea for the ills that plague American metropolitan areas, then the southern cities where annexation continued to reign in the twentieth century — the main actors in annexation's second act — would have evaded the type of problems associated with the protagonists of the first act. Yet racial and economic segregation, a declining urban core, failing schools, sprawl, and fiscal challenges are found not only in the cities of the Northeast and Midwest, but also in sunbelt cities such as Memphis, Charlotte, Tulsa and Dallas. Annexation has not made those cities “better” — more equitable, more efficient, or simply more planned — than their

186. See Mike Field, *Memphis Wants to Shrink*, MODERN CITIES (Feb. 13, 2017), <https://www.moderncities.com/article/2017-feb-memphis-wants-to-shrink> [<https://perma.cc/9KRQ-MBGW>].

187. The city has also refrained from fighting against areas that sought to de-annex themselves. See Rudy Williams, *Memphis is Shrinking, As Another Area of the Bluff City is De-Annexed*, LOCAL MEMPHIS (Feb. 20, 2019), <https://www.localmemphis.com/article/news/local/memphis-is-shrinking-as-another-area-of-the-bluff-city-is-de-annexed/522-b1afd65f-a335-479a-a113-4811d361c100> [<https://perma.cc/9M95-TSHB>].

188. Perhaps more famously, several Rust Belt cities, most prominently, Detroit, had also decided around the same time that they need to “right-size” themselves by shrinking. See Jeremy Kutner, *A Rust Belt City Tries to Shrink its Way to Success*, CHRISTIAN SCI. MONITOR (May 29, 2009), <https://www.csmonitor.com/Business/2009/0529/a-rust-belt-city-tries-to-shrink-its-way-to-success> [<https://perma.cc/3B9Y-HN2P>]; Daniel Okrent & Steven Gray, *The Future of Detroit: How to Shrink a City*, TIME (Nov. 11, 2010), <https://content.time.com/time/magazine/article/0,9171,2030898,00.html> [<https://perma.cc/C43G-VCG5>].

brethren up north. These cities have encountered the same cycles of rise and decline as those cities — just at a different time. Annexation accompanied these cycles, rather than generated them.

CONCLUSION

Annexation's American life story neatly traces the trajectory of American urban growth. Northern cities grew when annexation was prevalent there, and then, alongside annexation, urban growth migrated south. But annexation's relationship to urban growth is more complicated than that. Annexation does not simply generate growth. Annexation does not inherently embody a pro-urban legal bias. It often embodies economic realities. By drawing the boundaries of governments that supply core services, annexation manages infrastructure costs in the metropolitan region. As such, it does not necessarily serve the same party — annexing city or annexed area—in all circumstances, and is not everywhere efficient. Its prevalence and effects depend on surrounding economic circumstances.

Different types of cities — major and small, central and suburban, urban and rural, rich and poor — can all use annexation. Just as those cities differ, so does annexation's role. Not the sine-quo-non for suburbanization, annexation's demise should not be viewed as an unalloyed tragedy. Annexation is one tool for treating problems of growth and fragmentation, a tool that is useful in some settings and not in others. If it is somewhat less available to cities now, cities must focus on other tools that address fragmentation's ills, perhaps even more effectively: inter-local agreements, state funding, resource-sharing, regional planning, limits on exclusionary zoning, and more. City boundaries might now, in the aftermath of early twenty-first century reforms, be more static than ever before. We should always bear in mind how these boundaries legally attained their current form and location. But rather than hope against hope — against consistent historic trends and economic realities — that we can somehow keep stretching those boundaries out, we should concentrate our efforts on treating the problems they generate.